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Attorneys for Defendants Oregon Department of Education, Dr. Charlene Williams, and Tina Kotek

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

J.N., by and through his next friend, Cheryl Cisneros, E.O., by and through his next friend, Alisha Overstreet; J.V., by and through his next friend, Sarah Kaplansky; B.M. by and through his next friend, Traci Modugno; on behalf of themselves and all others similarly situated, and

COUNCIL OF PARENT ATTORNEYS AND
ADVOCATES, INC.,

Plaintiffs,

v.

OREGON DEPARTMENT OF
EDUCATION, Dr. Charlene William, in her
official capacities as Director of Oregon
Department of Education and Deputy
Superintendent of Public Instructions for the
State of Oregon, and TINA KOTEK, in her
official capacities as Governor and
Superintendent of Public Instruction for the
State of Oregon,

Defendants.

Case No. 6:19-cv-00096-AA

NOTICE OF SUPPLEMENTAL LEGAL
AUTHORITY

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

For the Court's information, Defendants respectfully submit enrolled Senate Bill 819 (2023), attached as **Exhibit A**. Senate Bill 819 was passed by the Oregon legislature in the 2023 session and was signed into law by Governor Kotek on July 13, 2023, approximately two months after summary judgment in this matter closed on May 18, 2023. Senate Bill 819 relates to abbreviated school day programs, creates new requirements, and repeals Oregon's previous shortened school day law (ORS 343.161).

Defendants are preparing to file a supplemental motion for summary judgment on the basis that Senate Bill 819 materially changes the legal framework as briefed in the parties' cross motions for summary judgment and moots much if not all of Plaintiffs' complaint. At a minimum, it significantly narrows the scope of the legal issues for this Court to adjudicate. Defendants are prepared to discuss this issue, and an appropriate briefing schedule, at the status conference currently scheduled for September 12, 2023.

DATED September 7, 2023.

Respectfully submitted,

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82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

Enrolled Senate Bill 819

Sponsored by Senators GELSER BLOUIN, KNOPP, WAGNER, DEMBROW, GORSEK, HAYDEN, JAMA, MANNING JR, PATTERSON, Representatives BYNUM, HUDSON, PHAM H; Senators ANDERSON, CAMPOS, FREDERICK, GOLDEN, HANSELL, LIEBER, MEEK, SOLLMAN, TAYLOR, THATCHER, WEBER, Representatives GRAYBER, HOLVEY, JAVADI, MANNIX, NELSON, RUIZ, TRAN, WALTERS

CHAPTER

AN ACT

Relating to abbreviated school day programs; creating new provisions; repealing ORS 343.161; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2023 Act:

(1) “Abbreviated school day” means any school day during which a student with a disability receives instruction or educational services for fewer hours than the majority of other students who are in the same grade within the student’s resident school district.

(2) “Abbreviated school day program” means an education program:

(a) In which a school district restricts access for a student with a disability to hours of instruction or educational services to less than the number of hours of instruction or educational services that are provided to the majority of other students who are in the same grade within the student’s resident school district; and

(b) That results in a student with a disability having an abbreviated school day for more than 10 school days per school year.

(3)(a) “Educational services” includes any social, learning, enrichment, community or support opportunity or benefit that is offered during the school day to the majority of other students who are in the same grade within a student’s resident school district, including:

(A) Passing time between classes;

(B) Time reasonably needed to transport a student between locations during the school day if the student receives hours of instruction or educational services in more than one location on the same day;

(C) Recess;

(D) Nonacademic assemblies and field trips;

(E) Job shadows, internships and community service activities arranged by the school or school district;

(F) Optional school programs held during the school day, including study periods and advisory periods that are open to the majority of students in the school;

(G) Lunch periods or other meal or snack periods provided to the majority of students of the school; and

(H) Reasonable access to school facilities during noninstructional time that is equal to the access available to the majority of other students who are in the same grade within the student's resident school district.

(b) "Educational services" does not include time being transported to or from school or time traveling between a classroom and transportation before or after the school day.

(4) "504 Plan" means an education plan developed for a student with a disability in accordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(5) "Foster parent" means the foster parent of a child or ward who is in the legal custody of the Department of Human Services as provided in ORS 418.015 or 419B.337 and who has been placed in substitute care.

(6) "Hours" includes any fraction of an hour.

(7) "Individualized education program team" includes, when applicable, a team that develops a 504 Plan.

(8) "Informed and written consent" means that a student's parent or foster parent has signed and dated a written consent form affirming that:

(a) The parent or foster parent received the information described in section 3 (2) and (3) of this 2023 Act;

(b) The parent or foster parent was not asked to provide consent for an abbreviated school day program placement before having an opportunity to meaningfully participate in a meeting of the individualized education program team;

(c) The school district offered, and the individualized education program team considered, at least one reasonable alternative placement, as described in section 3 (1)(c) of this 2023 Act, prior to requesting that the parent or foster parent provide consent for an abbreviated school day program placement;

(d) The parent or foster parent was informed that the individualized education program team will meet at least once every 30 calendar days during the school year unless the parent or foster parent provides signed consent to meet less frequently as provided in section 4 (2)(b)(B) of this 2023 Act;

(e) The parent or foster parent was informed that if, during the school year, the individualized education program team is scheduled to convene less frequently than once every 30 calendar days during the abbreviated school day program, the school district must convene an individualized education program team meeting within 14 calendar days of receiving a written request from the parent or foster parent for the meeting;

(f) The parent or foster parent voluntarily signed the consent form for the abbreviated school day program placement; and

(g) The parent or foster parent was informed of the right to revoke consent, in writing, to an abbreviated school day program placement at any time and informed that the parent or foster parent is not required to request or attend an individualized education program team meeting prior to revoking consent to an abbreviated school day program placement.

(9)(a) "Instruction" means the time during which a student is:

(A) Engaged in regularly scheduled instruction, learning activities or learning assessments that are designed to meet Common Curriculum Goals or grade level academic content standards or engaged in specially designed instruction that is individualized to support a student to make meaningful progress in the general curriculum.

(B) Working under the direction and supervision of a licensed or registered teacher, a licensed career and technical education instructor, a licensed practitioner or an instructional assistant who is assigned instructionally related activities and is working under the direct supervision of a licensed or registered teacher.

(b) "Instruction" does not include time spent:

(A) Passing between class, at recess, in nonacademic assemblies, on nonacademic field trips, traveling to or from school, loading or unloading from a school bus at the start or end of the student's school day, participation in optional programs or participation in study pe-

riods or advisory periods when attendance is not required and no instructional assistance is provided.

(B) In an online learning program during which the student is unable to access the materials or benefit from instruction because the school district has not provided the student with the supports necessary to access the materials or instruction, including the support of an instructional assistant, nursing services, adapted materials or other related services identified in the student's individualized education program or 504 Plan as being necessary for a free appropriate public education.

(10) "Meaningful access" means access to full-time, quality instruction or educational services that is:

(a) Delivered by:

(A) A qualified licensed teacher; or

(B) Qualified classified staff who are under the direct supervision of a qualified licensed teacher; and

(b) Synchronous, unless the instruction or educational services are provided by a virtual public charter school in compliance with ORS chapter 338.

(11) "Parent" includes:

(a) A parent or a legal guardian, other than a state agency.

(b) The student, if the student is 18 years of age or older or is emancipated pursuant to ORS 419B.550 to 419B.558.

(c) The student's surrogate, if the student has a surrogate, as defined in ORS 419A.004.

(12) "Resident school district" means the school district in which a student is a resident under ORS 339.133.

(13) "School district" includes an education service district.

(14) "Student with a disability" means a student who:

(a) Is eligible for special education and related services, as provided by ORS chapter 343;

(b) Has a disability under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and is eligible for a 504 Plan; or

(c) Has not been determined to be eligible for special education and related services, as provided by ORS chapter 343, or to be eligible for a 504 Plan, but for whom a request or referral for evaluation for eligibility determination has been made but not yet completed.

(15) "Unilaterally place" means a placement by a school district without the informed and written consent of the student's parent or foster parent.

SECTION 2. (1) The Legislative Assembly finds that:

(a) Students with disabilities have a right to meaningful access to the same number of hours of instruction and educational services as the majority of students without disabilities who are in the same grade within the student's resident school district.

(b) Removal from school is neither a service nor support for students with disabilities.

(c) Use of an abbreviated school day program for students with disabilities should be infrequent and, under most circumstances, should be used for a limited duration.

(2) Before considering or recommending a student with a disability for an abbreviated school day program, a school district must document reasonable efforts to provide meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(3) A school district may not consider, recommend or implement an abbreviated school day program due to the school district, or a contractor with the school district, having inadequate staffing available for instruction or educational services.

(4) For the purpose of determining if an abbreviated school day program has been implemented, or of determining if a student with a disability has received an abbreviated school day for more than 10 school days, the following are considered examples of an abbreviated school day:

(a) The school district implementing policies or taking actions that are not applied to the majority of other students who are in the same grade within the student's resident school district and that cause the student to start school late, to leave school early or to not come to school due to:

(A) Lack of school district personnel, including instructional assistants, nursing staff and transportation providers;

(B) Convenience of school district staff; or

(C) Behaviors related to the student's disability, unless the schedule is provided pursuant to ORS 339.250, 339.252, 343.155 (5) or 343.177.

(b) The school district releasing the student early from school or requesting or requiring the student not to come to school due to any illness that would not typically have the same effect for the majority of other students who are in the same grade within the student's resident school district.

(c) The school district requesting the student to not attend, prohibiting the student from attending or otherwise making attendance inaccessible for a planned activity, including a field trip, a special event or an outdoor school program.

(d) The school district imposing temporary lack of access to education facilities due to construction, special events or weather when that lack of access does not apply to the majority of other students who are in the same grade within the student's resident school district.

(e) The school district providing transportation that arrives at the student's school after the start of the school day or leaves from the student's school before the end of the school day and that causes the student to receive fewer hours of instruction or educational services than the number of hours provided to the majority of other students who are in the same grade within the student's resident school district.

(f) The school district failing to provide transportation identified in the student's individualized education program or 504 Plan.

(g) The student being placed in a program or school when:

(A) The program or school offers all students attending the program or school fewer hours of instruction and educational services than are provided to the majority of other students who are in the same grade within the student's resident school district; and

(B) The student's resident school district does not provide the student with an additional placement that ensures that the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(5) If an individualized education program team recommends that a student with a disability be placed in a program or school that offers fewer hours of instruction and educational services than are provided to the majority of other students who are in the same grade within the student's resident school district, the school district must inform the parent or foster parent in a language and format accessible to the parent or foster parent of the following:

(a) That placement in the program or school would be an abbreviated school day program placement unless a sufficient number of additional hours of instruction or educational services are provided to the student to ensure that the student has meaningful access to at least the same total number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district; and

(b) The number of hours of instruction and educational services that, over the course of two ordinary full school weeks, the student will not be able to access while placed on the abbreviated school day program if the student is not provided additional hours of instruction or educational services as described in paragraph (a) of this subsection.

(6)(a) When a school district places a student with a disability in a school or program, the student's resident school district shall ensure that the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district unless the student's parent or foster parent has provided informed and written consent for an abbreviated school day program placement.

(b) Prior to the placement of a student with a disability in a school or program, the student's resident school district shall ensure that the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(c) When calculating the number of hours of instruction and educational services that are provided by a school or program that operates on a different schedule than the schedule of the resident school district of a student with a disability, the resident school district must compare the total number of hours of instruction and educational services offered over the course of two ordinary full school weeks to determine whether the student will have meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade in the student's resident school district.

(d) The requirements of this subsection apply regardless of whether the resident school district has control over the school or program that the school district is considering placing the student with a disability in, including schools and programs that provide services under a contract with a school district or that serve students from multiple school districts.

(7) A school district may not unilaterally place a student with a disability on an abbreviated school day program, regardless of the age of the student.

SECTION 3. A school district may not provide an abbreviated school day program to a student with a disability unless all of the following are satisfied:

(1) The student's individualized education program team:

(a) Recommends that the student should be placed on an abbreviated school day program:

(A) Based on the student's individual needs, which may not include consideration of a lack of school district resources, including:

(i) Licensed or classified staff;

(ii) Availability of training;

(iii) Accessible facilities; and

(iv) Related services, including nursing services and transportation services; and

(B) After the opportunity for the student's parent or foster parent to meaningfully participate in a meeting of the individualized education program team to discuss an abbreviated school day program placement, including the reasonable opportunity to physically attend the meeting of the individualized education program team at which the abbreviated school day program placement is discussed.

(b) Makes determinations about the instruction and educational services to be offered to the student based on the student's individual needs.

(c) Documents that the school district offered at least one reasonable alternative placement that included appropriate supports for the student and that could enable the student to have meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(d) Documents the specific provisions of the abbreviated school day program, including:

(A) How the abbreviated school day program will be designed to:

(i) Support the student's return to a school day program that is not an abbreviated school day program; and

(ii) Make progress toward the student's individualized learning goals and progress in the general curriculum;

(B) The number of hours of instruction and educational services to be provided to the student while the student is placed on the abbreviated school day program;

(C) How the student's progress toward the student's individualized learning goals and progress in the general curriculum will be measured; and

(D) The date by which the student is expected to return to a school day program that is not an abbreviated school day program.

(2) Prior to the discussion of the abbreviated school day program placement, the school district provides a written statement to the student's parent or foster parent in a language and format accessible to the parent or foster parent informing the parent or foster parent of:

(a) The student's right to have meaningful access to the same number of hours of instruction and educational services as the majority of other students who are in the same grade within the student's resident school district;

(b) The prohibition on the school district to unilaterally place a student with a disability on an abbreviated school day program; and

(c) The parent's or foster parent's right, at any time, to withdraw consent for an abbreviated school day program placement or to request a meeting of the student's individualized education program team to discuss whether the student should no longer be placed on an abbreviated school day program.

(3) The school district provides a written statement summarizing the documentation described in subsection (1)(c) and (d) of this section in a language and format accessible to the parent or foster parent.

(4) The school district receives a signed acknowledgment from the parent or foster parent acknowledging receipt of the written statement described in subsection (2) of this section.

(5) The parent or foster parent provides informed and written consent for the abbreviated school day program placement.

SECTION 4. (1) When a student with a disability is placed on an abbreviated school day program, the provisions of this section apply.

(2) For each student with a disability placed on an abbreviated school day program, the school district shall:

(a) Prior to each meeting of the student's individualized education program team, provide the following information in writing to the parent or foster parent of the student in a language and format accessible to the parent or foster parent:

(A) The school district's duty to comply with the requirements of sections 1 to 6 of this 2023 Act;

(B) The prohibition against a school district unilaterally placing a student with a disability on an abbreviated school day program;

(C) The student's right to have meaningful access to the same number of hours of instruction and educational services as the majority of other students who are in the same grade within the student's resident school district; and

(D) The parent's or foster parent's right, at any time, to withdraw consent for an abbreviated school day program placement or to request a meeting of the student's individualized education program team to discuss whether the student should no longer be placed on an abbreviated school day program.

(b) Hold a meeting of the student's individualized education program team to review the student's abbreviated school day program as described in paragraph (c) of this subsection. During the school year, a meeting must be held:

(A) No fewer than 25 calendar days and no more than 35 calendar days after the initial placement on the abbreviated school day program.

(B) No less frequently than once every 30 calendar days, starting after the meeting described in subparagraph (A) of this paragraph, unless the parent or foster parent provides written consent to meet less frequently than once every 30 calendar days. Notwithstanding written consent provided under this subparagraph:

(i) In no event may a meeting be held less frequently than:

(I) Once every 90 calendar days for a student with an individualized education program, starting after the meeting described in subparagraph (A) of this paragraph;

(II) Once every year for a student with a 504 Plan, starting after the meeting described in subparagraph (A) of this paragraph;

(III) Once every year for a student who is enrolled in a virtual public charter school that operates in compliance with ORS chapter 338 and who has meaningful access to the same number of hours of instruction and educational services as the majority of other students who are not disabled students and who are in the same grade within the school, starting after the meeting described in subparagraph (A) of this paragraph; or

(IV) Once every year for a student receiving educational services in a pediatric nursing facility as provided in ORS 343.941, starting after the meeting described in subparagraph (A) of this paragraph; and

(ii) A meeting must be held within 14 calendar days of a parent or foster parent requesting a meeting.

(c) During each meeting of the student's individualized education program team while the student is placed on the abbreviated school day program:

(A) Obtain from the parent or foster parent a signed acknowledgement that the parent or foster parent received the information described in paragraph (a) of this subsection;

(B) Review the student's progress on the abbreviated school day program;

(C) Consider at least one reasonable alternative placement that includes appropriate supports for the student and that could enable the student to have meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district; and

(D) If the individualized education program team recommends continuing the abbreviated school day placement, consider whether the number of hours of instruction and educational services should be increased.

(d) If the parent or foster parent provides informed and written consent to continue an abbreviated school day program placement, include in the student's individualized education program or 504 Plan a written statement that:

(A) Explains the reasons the student was placed on the abbreviated school day program; and

(B) Describes in detail other reasonable options that were considered and documents why each option considered was not implemented.

(e) At least once every 30 calendar days during the school year, inform the Department of Education about the student's abbreviated school day program placement, including:

(A) The grade level of the student;

(B) The number of hours of instruction and educational services the school district is scheduled to provide to the student each week;

(C) The date the student began the abbreviated school day program; and

(D) The date by which the student is expected to receive meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(3)(a) The school district superintendent must review a student's abbreviated school day program placement if the student is placed on an abbreviated school day program for:

(A) Ninety or more cumulative calendar days during a school year; or

(B) Ninety or more cumulative calendar days, excluding summer break, when the student is placed on an abbreviated school day program during two or more consecutive school years.

(b) The school district superintendent must review the student's abbreviated school day program placement when required under paragraph (a) of this subsection and:

(A) Find that the abbreviated school day program placement is compliant with state and federal law and document in writing:

(i) The efforts of the school district to facilitate the student's meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district; and

(ii) The specific barriers that prevent that meaningful access; or

(B) Find that the abbreviated school day program placement is not compliant with state and federal law and ensure that, within five school days of making the finding, the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district unless an extension has been allowed as provided by section 5 (1)(d) of this 2023 Act.

(c) In addition to a finding made under paragraph (b) of this subsection, for any student in grades 9 through 12 not expected to graduate on time with a high school diploma, a modified diploma or an extended diploma, the school district superintendent must document in writing:

(A) The plan for credit recovery and comprehensive services, including compensatory services, that is being implemented to ensure the student's on-time graduation with a high school diploma, a modified diploma or an extended diploma; and

(B) The student's progress toward on-time graduation with a high school diploma, a modified diploma or an extended diploma.

(d) If the student is served by an education program through an education service district, the requirements of paragraphs (a) to (c) of this subsection apply to the superintendent of the resident school district.

(e) Any findings or documentation required under paragraphs (b) and (c) of this subsection must be provided, within five school days of making the finding, to the student's parent or foster parent in a language and format accessible to the parent or foster parent.

SECTION 4a. Section 4 of this 2023 Act becomes operative July 1, 2023.

SECTION 5. (1)(a) A parent or a foster parent may, at any time, revoke consent for the placement of a student with a disability on an abbreviated school day program.

(b) Consent for the abbreviated school day program placement shall be considered revoked if, at any time, the parent or the foster parent revokes the consent, in writing, to an abbreviated school day program placement or makes a written objection to the abbreviated school day program placement.

(c) Upon receipt of a written revocation or objection to the abbreviated school day program placement, the school district superintendent shall ensure that, within five school days or by a later date specified in a written notice provided by the parent or foster parent, the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(d) Notwithstanding paragraph (c) of this subsection, a parent or foster parent of a student may allow the school district superintendent to have an extension of an additional five school days to ensure that the student has meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district if:

(A) The parent or foster parent provides written consent for the extension;

(B) The parent or foster parent has not previously provided written consent for an extension for the student during the school year;

(C) The written consent states that the parent or foster parent understands that the parent or foster parent is not required to give consent for the extension and that the refusal to give consent for the extension will not result in adverse actions being taken against the student; and

(D) The school district provides to the parent or foster parent, in writing and in a language and format accessible to the parent or foster parent, the specific reasons why the extension is needed.

(e) If a school district fails to provide meaningful access before the expiration of an extension allowed under paragraph (d) of this subsection, any calculations of compensatory education that must be provided by the school district will be made as though an extension had not been allowed.

(f) If a student is on an abbreviated school day program on the last day of the school year and the student's parent or foster parent makes a written objection to the abbreviated school day program placement or revokes consent for the abbreviated school day program placement at least 14 calendar days prior to the beginning of the next school year, the student shall, beginning on the first day of the new school year, be provided with meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(2)(a) When the Department of Education receives a complaint or otherwise has cause to believe a school district is not in compliance with sections 2 (7) and 3 (5) of this 2023 Act, the department must initiate an investigation and inform the school district of any non-compliance within 30 calendar days of receiving the complaint or having cause to believe the school district is not in compliance.

(b) If a complaint described in paragraph (a) of this subsection relates to a specific student and is submitted by the student's parent or foster parent, the Superintendent of Public Instruction is not required to conduct an investigation and shall:

(A) Presume that consent for the abbreviated school day program placement has been revoked.

(B) Immediately, and in no case no more than two business days after receipt of the complaint, order the school district to provide to the student, within five school days, meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district. For the purpose of this subparagraph, "business day" has the meaning given that term in ORS 192.311.

(C) Find the school district is not in compliance with sections 2 (7) and 3 (5) of this 2023 Act if the school district fails to comply with the order described in subparagraph (B) of this paragraph and the parent or foster parent has not granted written consent for an extension as described in subsection (1)(d) of this section.

(c) If the superintendent finds that a school district is not in compliance with sections 2 (7) and 3 (5) of this 2023 Act, either after an investigation or as provided by paragraph (b) of this subsection, the superintendent shall:

(A) Enter an order that any students named in the complaint or identified in the course of an investigation initiated under paragraph (a) of this subsection who are placed on an abbreviated school day program in violation of sections 2 (7) and 3 (5) of this 2023 Act be provided, within five school days of the final order, with meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(B) If the school district fails to comply with the order described in subparagraph (A) of this paragraph within five school days, find the school district nonstandard under ORS

327.103 or 334.217 until all students subject to the order and placed on an abbreviated school day program in violation of sections 2 (7) and 3 (5) of this 2023 Act are provided with meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

(C) If the school district fails to comply with the order described in subparagraph (A) of this paragraph within 10 school days and notwithstanding any timelines or process requirements of ORS 327.103 or 334.217, immediately withhold State School Fund moneys that otherwise would be distributed to the school district. Amounts withheld must be calculated based on the weighted average daily membership attributable to the students subject to the order, as calculated under ORS 327.013, and the percentage of the school year that the students were placed on an abbreviated school day program in violation of sections 2 (7) and 3 (5) of this 2023 Act.

(D) Require the school district to provide compensatory education to the students subject to the order that is equivalent to at least one hour of direct instruction for every two hours of instruction that were lost due to an abbreviated school day program placement in violation of sections 2 (7) and 3 (5) of this 2023 Act.

(3) The failure of a school district superintendent to restore meaningful access to a student within the time required by section 4 (3)(b)(B) of this 2023 Act or subsection (1)(c) or (d) of this section or to comply with an order issued under subsection (2)(c) of this section to restore meaningful access to all students subject to the order may be grounds for discipline by the Teacher Standards and Practices Commission under ORS 342.175. If the commission receives a complaint concerning a failure described in this subsection, the commission shall take into consideration the responsive efforts and actions of the superintendent to restore meaningful access to the student or students.

SECTION 6. Sections 2, 3, 4 and 5 of this 2023 Act do not apply to any of the following:

(1) Any abbreviated school days that are a component of discipline imposed in compliance with ORS 339.250, 339.252 or 343.155 (5) or that are the result of a placement made as provided by ORS 343.177.

(2) A student's exclusion from schools due to the student's immunization status or due to the student's exposure to a restrictable disease, as provided by ORS 433.235 to 433.284.

(3) The exclusion of a student from schools or the closure or restriction of access to schools due to actions taken under a public health emergency authorized under ORS 433.441 to 433.452.

(4) A student who has fulfilled all state requirements for graduation with a high school diploma, as described in ORS 329.451 (2), when the parent or foster parent has agreed to the abbreviated school day program.

(5) A student enrolled in a program described in ORS 336.585, 336.590, 339.129, 343.261, 343.961 (1)(c)(A)(i) or 346.010, if the student has meaningful access to the same number of hours of instruction and educational services as the majority of other students enrolled in the same program as the student.

(6) A student whose parent or foster parent has notified an education service district that the student is being taught by a parent, legal guardian or private teacher under ORS 339.035.

(7) A student who is excluded from, or limited access to, school due to a court order.

(8) A high school student who is voluntarily enrolled in an alternative education program in compliance with ORS 336.635, the Expanded Options Program under ORS 340.005 to 340.090 or an accelerated college credit program as defined in ORS 340.300, when:

(a) The majority of the students of the program are not students with disabilities;

(b) The student is not restricted to attending fewer hours of instruction and educational services than the number of hours of instruction and educational services attended by the

majority of students without disabilities who are in the same grade and who attend the same program; and

(c) For an alternative education program in which the student is enrolled under ORS 336.635, the school district informs the parent or foster parent, in writing and in a language and format accessible to the parent or foster parent, that upon written request of the parent or foster parent, the student will be immediately restored to a school that allows the student to access the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district.

SECTION 7. (1) Nothing in sections 1 to 6 of this 2023 Act is intended to limit or operate as a prerequisite to pursuing any rights or remedies provided under other state or federal statutes or common law.

(2) Nothing in sections 1 to 6 of this 2023 Act is intended to eliminate or limit the ability of a school district to request an expedited hearing as described in ORS 343.165 (8)(b) because the school district believes that not making an abbreviated school day program placement is substantially likely to result in injury to the student or others. When an expedited hearing is conducted pursuant to ORS 343.165 (8):

(a) Notwithstanding ORS 343.167, a hearing officer's finding that an abbreviated school day program placement is appropriate may not be valid for more than 45 days from the date the decision is entered;

(b) Notwithstanding sections 2, 3, 4 and 5 of this 2023 Act, and if the school district is in compliance with the decision of the hearing officer:

(A) A parent or foster parent may not compel, and the Department of Education may not order, a school district to provide meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district; and

(B) The Department of Education may not find the school district is not in compliance with sections 2 (7) and 3 (5) of this 2023 Act and the Teacher Standards and Practices Commission may not take any action described in section 5 (3) of this 2023 Act; and

(c) The student's individualized education program team shall immediately meet to review the student's abbreviated school day program and to revise the student's individualized education program or 504 Plan to make the documentation described in section 3 (1)(d) of this 2023 Act.

SECTION 8. ORS 343.161 is repealed.

SECTION 8a. Notwithstanding section 8, chapter 202, Oregon Laws 2023 (Enrolled Senate Bill 992) (amending ORS 343.161), if Senate Bill 992 becomes law, ORS 343.161 is repealed by section 8 of this 2023 Act.

SECTION 9. (1) Sections 1 to 3 of this 2023 Act apply to a student with a disability who is placed on an abbreviated school day program on or after the effective date of this 2023 Act.

(2) Nothing in this section prevents a parent or foster parent from revoking consent for or making a written objection to an abbreviated school day program placement, or the Department of Education or the Superintendent of Public Instruction from taking any action related to the placement of a student with a disability on an abbreviated school day program, if the abbreviated school day program placement occurred before the effective date of this 2023 Act and the abbreviated school day program placement is ongoing on the effective date of this 2023 Act.

(3) If a parent or foster parent does not revoke consent or make a written objection to an abbreviated school day program placement that occurred before the effective date of this 2023 Act and that was ongoing on the effective date of this 2023 Act:

(a) The school district is not required to retroactively obtain informed and written consent from the parent or foster parent;

(b) The abbreviated school day placement shall continue until the next meeting of the student's individualized education program team; and

(c) At the next meeting of the student's individualized education program team, consideration of placement on an abbreviated school day program shall be conducted in compliance with sections 3 and 4 of this 2023 Act.

SECTION 10. Section 11 is added to and made a part of sections 1 to 6 of this 2023 Act.

SECTION 11. (1) No later than 14 calendar days after the effective date of this 2023 Act, each school district shall provide the notice described in subsection (2) of this section to the parents or foster parents of every student with a disability who:

(a) Was on an abbreviated school day program at the end of the 2022-2023 school year; or

(b) Had an abbreviated school day for 30 or more school days during the 2022-2023 school year.

(2) The notice required under this section must be in a language and format accessible to the parent or foster parent and must inform parents and foster parents of:

(a) The enactment of this 2023 Act;

(b) The notice and disclosure requirements of section 4 (2)(a) of this 2023 Act;

(c) The parent's or foster parent's right to revoke, in writing, consent for an abbreviated school day program placement or to make a written objection to a student's abbreviated school day program placement;

(d) The name, electronic mail address, mailing address and other contact information of the person to whom a revocation or objection described in paragraph (c) of this subsection may be sent;

(e) The obligation of the school district, within five school days of receiving a revocation or objection described in paragraph (c) of this subsection or by a later date specified by written notice by the parent or foster parent, to provide a student with a disability with meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district;

(f) The student's right to meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within the student's resident school district beginning on the first day of the 2023-2024 school year if the parent or foster parent provides the revocation or objection described in paragraph (c) of this subsection at least 14 calendar days prior to the start of the 2023-2024 school year, as identified by the school district; and

(g) The contact information for:

(A) The Department of Education;

(B) The parent information and training center for families with children with disabilities, or FACT Oregon; and

(C) The system designated to protect and advocate for the rights of individuals with disabilities, or Disability Rights Oregon.

(3) Notwithstanding section 5 (1)(d) of this 2023 Act, an extension may not be allowed if a parent or foster parent revokes consent for an abbreviated school day program placement or makes a written objection to a student's abbreviated school day program placement at least 14 calendar days prior to the start of the 2023-2024 school year as described in subsection (2)(f) of this section.

SECTION 12. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Education, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$3,140,320, to implement the provisions of this 2023 Act.

SECTION 13. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate March 2, 2023

Received by Governor:

Repassed by Senate June 24, 2023

.....M.,....., 2023

Approved:

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Lori L. Bocker, Secretary of Senate

.....M.,....., 2023

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Rob Wagner, President of Senate

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Tina Kotek, Governor

Passed by House June 23, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

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Dan Rayfield, Speaker of House

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Secretary of State